

The Fulfillment of the Compliance Obligation by the Legal Person and the Consequences of its Infringement from the Criminal Law Perspective

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Abstract

The fulfillment of the compliance obligation by the legal person is a new type of obligation arising in the modern economic context, the Romanian legislator bounding the legal entity with administrative and criminal sanctions in case of its infringement, even if there is neither a culture of compliance, nor a compliance legal system provided in the Romanian legal and social environment.

In Romania, courts tend to convict legal persons in an „automatic mode”, the subjective element (mens rea) of a collective entity being extremely difficult to prove. Elements such as the fulfillment of the compliance obligation or meeting of the due diligence standard by the legal persons in carrying out their activity could be the key in avoiding „automatic” convictions founded exclusively on the rigid application of art. 135 of the Romanian Criminal Code.

Keywords: criminal liability of the legal person, compliance obligation, due diligence, mens rea, organizational model.

I. General aspects on the compliance obligation. Distinctions between compliance and due diligence. Lessons from US and Netherlands

The Anglo-Saxon term „compliance” may be defined simplistically as the observance of legal rules by the legal person agent. However, the term „compliance” means, in its complexity, the management of an information and communication system in order to protect the interests of the legal person insofar as it is exposed to the risk of breach of legal provisions. In other words, compliance is a type of relationship between the state – which, as a legislative authority, represents the general public interest in the protection of social values, establishing rules for carrying out activities, standards and levels of protection of these values – on the one hand, and the legal person (especially legal persons under private law) on the other hand, – which pursues its particular interest in carrying out an activity within the legal framework provided by the legislature. Compliance involves two actors – one active –

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the state – and one passive – the legal person – and results in „partial overlap of state interests with those of the legal person, in other words ensuring a balance between prevention and punishment of crimes in the general interest and risk management in the private interest¹„.

From the state's point of view, compliance is assimilated to trying to influence, through regulation, management systems, so as to ensure better prevention, identification and punishment of violations of the law. Criminal compliance, as the term is understood here, uses the arsenal of criminal law, its procedure and its method of establishing sanctions for this purpose. If criminal law systems, insofar as they already encourage effective compliance management, sometimes seem helpless confronting offenses committed by a legal person, we must agree that it is very difficult to design a system that fully ensures effectiveness of management systems and capitalize the influence of corporate culture on the individual behavior of its agents.

In order to meet the standard of compliance, legal entities must establish compliance programs and strategies, in some countries the law requiring it. Thus, in US criminal proceedings, the effectiveness of a company's compliance program is assessed based on the factors listed in the *US Sentencing Guidelines*². The task of

¹ B. Fasterling, *Criminal compliance – Les risques d'un droit pénal du risque*, Revue internationale de droit économique, 2016/2 (t. XXX), p. 217.

² §8B2.1. Effective Compliance and Ethics Program – US Sentencing Guidelines:

„(a) To have an effective compliance and ethics program, for purposes of subsection (f) of §8C2.5 (Culpability Score) and subsection (b)(1) of §8D1.4 (Recommended Conditions of Probation – Organizations), an organization shall –

(1) exercise due diligence to prevent and detect criminal conduct; and

(2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

Such compliance and ethics program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting criminal conduct. The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct.

(b) Due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law within the meaning of subsection (a) minimally require the following:

(1) The organization shall establish standards and procedures to prevent and detect criminal conduct.

(2) (A) The organization's governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.

(B) High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program, as described in this guideline. Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.

(C) Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance and ethics program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.

assessing whether a corporation's compliance program has worked as well in practice as intended is time-consuming and, as such, an excessively resource-intensive exercise to impose on prosecutors and judges. Prosecutors and judges are required to assess the effectiveness of a compliance program in order to engage the criminal liability of the legal person.

An „effective“ compliance program is an internal mechanism implemented by companies to detect and prevent criminal behavior that may occur within the corporation. Such a program operates continuously throughout the corporation. The program contains three basic elements – a formal code of conduct, an office and compliance officer, and a telephone line for employees.

Although the decision to implement a compliance program is usually made by the corporation itself, corporations in the US system sometimes have to implement compliance programs as part of criminal sentences. This measure is necessary to ensure that the internal structure of the corporation discourages future violations of the law³. Actually, this is quite an interesting approach of the American courts.

Compliance programs play a significant role in the investigation and conviction phase of the legal person in the US system. In an initial version, the *US Sentencing Guidelines* provided a reduction of the punishment of up to five times in some cases, in

(3) *The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.*

(4) (A) *The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.*

(B) *The individuals referred to in subparagraph (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents.*

(5) *The organization shall take reasonable steps –*

(A) *to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;*

(B) *to evaluate periodically the effectiveness of the organization's compliance and ethics program;*
and

(C) *to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.*

(6) *The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.*

(7) *After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar."*

<https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf>, accessed on 23.02.2021.

³ P.A. Wellner, *Effective compliance programs and corporate criminal prosecutions*, Cardozo Law Review vol. 27: 1/ 2005, p. 502, www.friedfrank.com, accessed on 20.02.2021.

case of the existence of an „effective compliance program”⁴. Also, the existence of an effective compliance program could lead to the total exclusion of the prosecution of the legal person. Such an assessment of the corporation's general preventive measures as part of the conviction process differs entirely from the corporation's specific actions regarding the commission of the offense. In my opinion, the American model is extremely attractive and simple to apply and can be a starting point in the process of completing the relevant criminal legislation.

Although the obligation to comply has a legal source, there are situations in which even the scholars confuse *compliance* with *due diligence*, using the two notions with a synonymous meaning. It is therefore necessary to clearly establish the meaning of each notion and the existence of a relationship between them. In the view of all the above, we can conclude the following:

- *Due diligence* is a general and social standard that sets a reasonable level of caution in adopting conduct on the part of the individual. It represents the care that any social actor must show in his/her relations with others, being a direct consequence of the principle of non-laity (*neminem laedere*). It does not necessarily have a legal connotation, but it can be used in the logical operation of establishing the presence of the subjective element necessary for the existence of the crime/offense if the legal person is accused of committing such an act.
- *Compliance* is the observance of legal provisions and legal principles aimed for preventing harmful or prejudicial acts. This element has a legal connotation because certain sectoral activities are legally regulated and the legal person cannot function without complying them.
- *Compliance duty/obligation* is the obligation to comply, when such an obligation is expressly provided by law under legal sanction. In my opinion, when the law provides the obligation to comply for a legal person, its non-fulfillment is a clear proof of the guilt of the legal person, as its fulfillment is an effective defense that the legal person can successfully invoke in criminal proceedings. In the event of law linking a criminal sanction to the infringement of the obligation to comply, the provisions of the concurrent offenses will be applicable to the case.

As regards the relationship between *due diligence* and *compliance*, in my opinion, due diligence is not a component of the compliance obligation, both elements being the key in assessing the subjective position of the legal person in relation to the criminal act committed and its outcome. This differentiation between the two elements allows the existence of absurd situations in which a person may comply without being diligent (for example, a compliance program has been implemented but there is no concern for periodic verification of its application at the level of legal activity), as well as a person may be diligent without complying (in the event that a mandatory compliance program has not been implemented according to the law, e.g.

⁴ *Idem*, p. 505.

no organizational structure has been established to create and implement this program and monitor its compliance), *but de facto* caution is exercised in carrying out current activity in order to prevent the commission of criminal deeds.

In fact, there are several differences between compliance and due diligence⁵:

- a) *Reactive vs. proactive* – Compliance is usually required by a legislative or regulatory authority. Diligence is not mandatory, although it may be part of a legal person's policies and procedures.
- b) *Tactical vs. strategic* – In the case of compliance, the obligation has a usually short deadline within which action must be taken to achieve clear and timely objectives; what is necessary is fulfilled within the time limit set by the legislative authority. In the case of due diligence, the risk assessment is comprehensive, the known and unknown aspects are analyzed, the objectives of the legal person are compared, the risks and the level of comfort are taken into account and a decision or action is taken.
- c) *Limited vs. unlimited* – To verify compliance, there is a limited legal framework on the qualitative and quantitative aspects to be verified. In due diligence investigations, these restrictions do not apply.
- d) *Identifying the problem vs. creating a profile* – Specific compliance checks aim at discovering what did not work in the activity of the legal person. The purpose of a due diligence investigation is to analyze good and evil in order to subsequently substantiate a decision based on the complete picture thus outlined.
- e) *Check list orientation vs. „Open-end“* – the compliance check follows specific elements that it checks and „ticks“ in a list, while the due diligence check aims to establish what happened, why it happened and what will happen next.

If a legal person acts observing the standard of diligence (caution) in carrying out its activity, this does not automatically lead to the conclusion that it will be excused for criminal liability. In the case of offenses committed by the legal person, its criminal conviction will depend on three pillars: the material element (deed – *actus reus*), e.g. a sufficient degree of involvement in the crime/offense; the subjective element (guilt – *mens rea*), e.g. a sufficient degree of intent or knowledge about its involvement in the commission of the crime/offense; and *the absence of any defense* that could either justify the involvement in the commission of the crime/offense or make it impossible to impute the deed. In the context of the criminal liability of the legal person, diligence or precaution is relevant for all three pillars of criminal liability, thus placing it at the center of the criminal liability of the legal person⁶. In systems that recognize the institution of criminal liability of the legal person, the employment of the criminal

⁵ M. Phelps, *Five differences between compliance and due diligence*, Marcy Phelps Inc., 5 August 2019, <https://marcyphelps.com/five-differences-between-compliance-and-due-diligence/>, accessed on 23.02.2021.

⁶ This idea was presented also by G. Sluiter in *Due Diligence and Secondary Liability for Companies in Case of Causing or Contributing to Human Rights Violations*, 20.12.2018, Rethinking SLIC (Secondary Liability for International Crimes), www.rethinkingslic.org, accessed on 23.02.2020.

liability of the collective entity with legal personality depends in practice on determining whether the material acts committed by a natural person for or in connection with the legal person could be attributed to the latter.

There are certain categories of offenses – such as, for example, corruption – for which a theory of defense based on due diligence or fulfillment of the obligation to comply has been created in various states by case law and which may lead to a criminal exoneration of the legal person. Thus, in the United States, according to the theory of identification applicable to the criminal liability of the legal person, it is necessary that the control officer of the legal person (a.n. the compliance officer) had the subjective element of the crime of bribery. If this is proved, a presumption of guilt will operate for the legal person because, if the decision-making structure of the legal person has known, foreseen or neglected the prevention of committing such an act, it is obvious that the legal person has acted with guilt in respect of the same crime. There is also a Guide to Proceedings for Preventing Corruption by the US Department of Justice (*The MoJ Guidance*⁷) which sets out six principles that outline compliance with the law and the effects of legal compliance. When the legal person is accused of a corruption offense and it can be proved by the judicial bodies that the decision-making structure (management of the legal person) was aware of the risk and acted at least negligently in preventing it, the defense based on diligence or compliance invoked by the legal person would not be effective at all⁸.

In the Netherlands, the standard of diligence has also been established by case-law. However, some Dutch criminal provisions (such as environmental or economic ones) contain such requirements regarding the due diligence standard⁹. The imposing of the criminal liability to the legal person based on the failure to fulfill the due diligence obligation for some crimes/offenses such as corruption, has no legal support, being necessary only to verify the fulfillment of the general conditions provided by law for the criminal liability of the legal person. Legal entities may voluntarily adopt a code of conformity in business activity, the Dutch doctrine arguing that such a document is of great importance in assessing the fulfillment of the due diligence obligation by a legal person. The lack of adequate supervision and control by the decision-making structure of the legal person could lead to the criminal liability of a legal person for a corruption offense committed by one of its employees. The Dutch Supreme Court¹⁰, in a decision from 2003, established a set of criteria for engaging the criminal liability of the legal person. The Dutch Supreme Court has ruled that the criminal liability of the legal person depends on the circumstances of the case and

⁷ <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>, accessed on 22.02.2021.

⁸ B. Meyer, T. van Roomen, E. Sikkema, *Corporate Criminal Liability for Corruption Offences and the Due Diligence Defence. A Comparison of the Dutch and English Legal Frameworks*, Utrecht Law Review, Volume 10, Issue 3 (June) 2014, p. 43.

⁹ For example, the obligation of an aviation company to hire qualified personnel and to use appropriate equipment during a flight, provided by art. 1.3. of the *Netherlands Aviation Act*.

¹⁰ B. Meyer, T. van Roomen, E. Sikkema, cited, p. 46-47.

whether the offense can be „reasonably” imputed to the legal person, this being possible if the unlawful conduct took place in the course of the legal entity. Such conduct may be penalized in one or more of the following circumstances¹¹:

- (1) the deed was committed by someone who is employed or works for the legal person;
- (2) the act was part of the normal business activities of the legal person;
- (3) the legal person benefited from the commission of the deed; and
- (4) the legal person had the power to decide on the performance or not of the respective behavior and accepted this or a similar behavior.

These criteria are not seen as cumulative or exclusive, still are instruments or factors that determine the liability of the legal person in the Netherlands. The absence of one of the mentioned situations will not necessarily lead to the conclusion that the actions of the associates/employees cannot be attributed to the legal person. According to the fourth criterion, criminal liability can be established if the legal person has accepted the commission of the offense, which may be the case if the legal person has not acted with reasonable diligence to prevent it. Although the existence of adequate preventive measures cannot always be used to avoid the criminal liability of the legal person, it can be considered as an indication of the absence of the subjective element¹².

II. Is the compliance obligation explicitly provided by Romanian legislation?

In 1995, in a reference work of the Romanian criminal doctrine, the late prof. Gh. Antoniu spoke for the first time about the explicit and implicit elements used by the legislator to describe the content of the criminal act and showed that the implicit elements are those which would characterize the respective deed, being deduced rationally from all the other features or in relation to the features of close incriminations¹³. It has also been shown that this procedure of the legislator to complete the explicit content of the legal description with implicit requirements can lead either to the amplification of the content of the legal description or to its restriction, by including in the content of the criminalization some negative implicit requirements¹⁴. The implicit requirements, whether positive or negative, can refer in the opinion of the cited author, both to the legal model of the deed and to that of guilt, the judicial body having an extremely delicate but at the same time complex task in interpreting the norm and to verify the correspondence of all the conditions of typicality to the elements of the concrete deed committed¹⁵. The obligation of compliance established by the legislator explicitly or implicitly for the legal person can

¹¹ *Idem*, p. 47.

¹² *Idem*, p. 48.

¹³ G. Antoniu, *Vinovăția penală [Criminal Guilt]*, Ed. Academiei Române, București, 1995, p. 76.

¹⁴ *Idem*, p. 76.

¹⁵ *Ibidem*.

be analyzed as an implicit condition of subjective typicality, with positive or negative character, on its fulfillment depending on the existence of the subjective element in the case of the criminal responsible person.

In this sense, in the analysis of the content of the crime, the „evaluation elements” initiated by Jescheck¹⁶ make it possible to extend the conditions or legal elements of the crime beyond the scope of those that can be identified by a simple observation and judgment, in the sphere of the intrinsic ones, which could not easily emerge from the observation of reality data and presuppose an evaluation by the judicial body¹⁷.

Last but not least, in the German doctrine, but also in the Italian one, there was a discussion on the objective conditions of punishment – those elements provided by the criminalization norm whose existence is not conditioned by the agent's intention or fault and which are even mentioned by the art. 44 of the Italian Penal Code as follows: „When, for the punishment of the crime, the law imposes the existence of a condition, the offender is liable for the crime, even if the event, on which the existence of the condition depends, is not willed by him”. The Italian Criminal Code does not in fact provide a definition of the objective conditions of punishment but, according to Italian doctrine, these are events that are not related to the wrongful conduct, being concomitant or subsequent to it, and which are not necessarily willed by the agent. The sanctioning of the criminal act depends on these conditions, where the law refers to them. Some consider them to be a constituent element of the crime, others, on the other hand, tend to consider them external to the crime, so their relevance is understood only in terms of punishment or the application of punishment. It is also customary to distinguish between intrinsic conditions which involve a further aggravation of the punishment, and extrinsic conditions, which do not concern the unlawfulness of the act.

The Italian doctrine specifies that these conditions work even if the external event is not intended by the agent, thus being conditions of objective liability, but specifies that only extrinsic ones would determine an objective criminal liability, while intrinsic conditions should be analyzed in terms of guilt, being necessary at least the guilt as a subjective position in order to be able to engage the criminal liability of the agent for the committed deed¹⁸.

Needless to say, neither the law, nor the Romanian criminal doctrine recognize these institutions, although the recognition of their presence would facilitate the interpretative approach and would simplify the analysis of the presence of the subjective element necessary for the existence of the crime and its sanctioning.

¹⁶ H.H. Jescheck, *Lehrbuch des Strafrechts Allgemeiner Teil*, Dunker und Humblot, Berlin, 1988, p. 242-243.

¹⁷ The assessment of the significance of the action (e.g. the act is likely to alarm the victim in the case of art. 193 Romanian Criminal Code – RCC), of the result (e.g. be likely to endanger persons or property in the case of art. 253 RCC), or of some legal aspects (lack of the right in case of intrusion without right provided by art. 224 RCC. or non-existence of any right of material disposition in case of destruction of the property belonging to another – art. 253 RCC).

¹⁸ R. Petrucci (coord.), *Codice penale spiegato. Spegato articolo per articolo. Leggi complementari*, XVIII edizione 2014, Gruppo editoriale Simone, p. 44-45.

In view of the above, what would the legal criminal value of the obligation to comply be? Implicit element of the crime, element of evaluation of the subjective typicality of the deed, or negative objective condition of punishment?

The obligation to comply with certain legal provisions governing the conduct of certain activities being sometimes established under criminal sanction, if failure to comply with this obligation and failure to comply with such legal provisions results in a dangerous or harmful result to which the law binds a criminal consequence, we should consider the obligation of conformity as either an element of evaluation of the subjective typicality, or an objective condition of punishment. However, compared to the Romanian criminal legal framework, the variant of the objective condition of punishment is excluded since the Romanian law does not provide for such an institution. Of course, the first option is also excluded, the concept of typicality being incompatible with the notion of implicit element of the crime, because it would violate the standards of predictability and clarity of the criminal law.

It therefore remains the variant of the element of assessment of subjective typicality that „shifts” the analysis and discussion from the theoretical to the practical, from the substantial law to the actual judicial process in which the judiciary must make every effort to establish, beyond any reasonable doubt not only the deed and its result, but also the subjective position of the agent who committed them and which can be deduced only from undoubted factual circumstances. However, the lack of an undoubted evidentiary basis regarding the objective and subjective aspects of the deed makes it impossible to impose the criminal liability to the agent (be he/she a natural or legal person), according to the principle *in dubio pro reo*¹⁹.

Romanian law explicitly provides compliance duty in a limited number of cases, in the field of preventing money laundering and combating terrorist financing, as well as in the field of personal data protection. In the case of other activities, the obligation to comply can be deduced from the fact of the provision in the criminal law of some criminal sanctions for the intentional or culpable non-observance in some cases of those legal provisions. In other words, in my opinion, we can identify in the Romanian criminal legislation two types of compliance obligations according to the criterion of the express provision by the law: the explicit compliance obligation (see points a and b below) and the implicit compliance obligation (point c below):

- a) the case of preventing money laundering and financing terrorist acts – Law no. 129/2019²⁰; this normative act establishes the reporting entities (art. 5), the content and rules regarding the reporting obligations (art. 7-9), the measures for knowing the clientele (art. 10-17), the registers regarding the real beneficiary (art. 19), the compliance officer (art. 23-24), the obligation to assess the risks (art. 25). It is interesting that this normative act establishes a

¹⁹ Art. 4 par. 2 of the Romanian Criminal Procedure Code: „After all the evidence is presented in the case, any doubt persisting in the mind of the judicial bodies shall be interpreted in favor of the suspect or defendant.”

²⁰ Published in Official Monitor no. 589 from 18th July, 2019.

compliance strategy and the obligation to draw up a compliance plan, providing in art. 25 that reporting entities have an obligation to identify and assess the risks of money laundering and terrorist financing exposure, taking into account risk factors, including those relating to customers, countries or geographical areas, products, services, transactions or channels distribution. The assessments prepared for this purpose shall be documented, updated including on the basis of national and sectoral assessments and regulations or instructions issued by the authorities and shall be made available to supervisory and control authorities and self-regulatory bodies upon request. The evaluations performed are the basis of its own risk management policies and procedures, as well as in determining the set of customer awareness measures that are applicable to each client. Reporting entities operating through branches, agents or distributors in another Member State are required to ensure that they comply with the national law of that Member State concerning the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. Where the provisions of this Act are more stringent, the reporting entities shall ensure that their branches, agents or distributors in another Member State also comply with these provisions.

- b) in the case of the protection of personal data, there is an entire legal framework which establishes in conjunction the limits of the obligation to comply in this matter: Regulation (EU) 2016/679²¹ on the protection of individuals with regard to the processing of personal data and on the free movement of these data and repealing Directive 95/46/EC (General Data Protection Regulation); Law no. 102/2005 regarding the establishment, organization and functioning of the National Authority for the Supervision of Personal Data Processing²²; Law no. 190/2018²³ on measures for the implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing of Directive 95/46/EC; Law no. 363/2018²⁴ on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating, prosecuting and combating crime or the execution of punishments, educational and security measures, and on the free movement of such data; Law no. 129/2018²⁵ for the amendment and completion of Law no. 102/2005 regarding the establishment, organization and functioning of the National Authority for the Supervision of Personal Data Processing, as well as for the abrogation of Law no. 677/2001 for the protection of individuals with regard to the processing of

²¹ <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

²² Republished in Official Monitor no. 947 from 9th November, 2018.

²³ Published in Official Monitor no. 651 from 26th July, 2018.

²⁴ Published in Official Monitor no. 13 from 7th January, 2019.

²⁵ Published in Official Monitor no. 503 from 19th June, 2018.

personal data and the free movement of such data. This law repealed Law no. 677/2001²⁶ for the protection of individuals with regard to the processing of personal data and the free movement of such data.

Thus, art. 10 of Law no. 190/2018 establishes the obligation to appoint the person responsible for personal data protection, art. 13 of Law no. 363/2018 establishes that the data operators are obliged to establish the organizational, technical and procedural measures in order to make available to the interested persons the following categories of information:

- a) the identity and contact data of the operator;
- b) the contact details of the data protection officer, as the case may be;
- c) the purposes for which the personal data are processed;
- d) the right to submit a complaint to the supervisory authority and its contact details;
- e) the right to request from the controller access to personal data relating to the data subject or the rectification or deletion of such data or the restriction of their processing. According to art. 27 of the same normative act, the operator is obliged to keep records of all categories of processing activities under his responsibility. The operator is obliged to designate a person responsible for the protection of personal data (art. 40) to consult properly and in a timely manner in all aspects related to the protection of personal data (art. 41) etc. Non-compliance of the legal provisions regarding the protection of personal data constitutes contravention, still contraventions, as we recall, constitute criminal cases in the interpretation of the ECHR²⁷.

- c) however, there are other legal provisions that establish certain obligations for legal entities and which do not include explicit provisions regarding the obligation to comply, but whose non-compliance attracts criminal liability: failure to take legal measures for safety and health at work – art. 349 RCC²⁸, non-compliance with legal measures for safety and health at work – art. 350 RCC²⁹, failure to combat diseases – art. 352 RCC³⁰ etc.

²⁶ Published in Official Monitor no. 790 from 12th December, 2001, presently repealed.

²⁷ *Case Anghel v. Romania*, ECHR, Judgment of 31st March 2008, <http://ier.gov.ro/wp-content/uploads/cedo/Cauza-Anghel-impotriva-Romaniei.pdf>, accessed on 10.04.2021.

²⁸ Art. 349 of RCC – Failure to take occupational health and safety measures

„(1) Failure to take any of the legal occupational health and security measures by a person who was charged with taking these measures, in case it results in the imminent danger of a labor accident or of an occupational disease, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.

(2) The act set out in par. (1) perpetrated out of negligence shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine”.

²⁹ Art. 350 of RCC – Non-compliance with occupational health and safety rules

„(1) Non-compliance with the occupational health and safety rules by any individual, if this results in the imminent danger of a labor accident or of an occupational disease, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.